

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number: EB-03-NF-014
	)	
Frank Neely	)	NAL/Acct.: No.200332640007
Licensee of AM Radio Station WLTC	)	
in Gastonia, North Carolina	)	FRN: 0008498685
Rock Hill, South Carolina	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**By the Enforcement Bureau, Norfolk Office:**

**Released: July 16, 2003**

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Frank Neely (“Neely”), licensee of AM radio station WLTC, Gastonia, North Carolina, apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for repeated violation of Section 73.1745(a) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Neely apparently liable for operating with unauthorized power.

**II. BACKGROUND**

2. Frank Neely is the licensee of non-directional, commercial AM broadcast station WLTC. WLTC is authorized to serve Gastonia, North Carolina on a frequency of 1370 kHz with a power of 12 kW, daytime, various post-sunset powers (500 watts, 8:00 p.m. – 8:30 p.m., EDT; 262.3 watts, 8:30 p.m. – 9:00 p.m., EDT and 164.7 watts, 9:00 p.m. – 10:00 p.m. EDT), and 30 watts, nighttime.

3. On April 22, 2003, in response to information alleging overpower operation by WLTC, an agent of the Commission's Norfolk Resident Agent Office (“Norfolk Office”) monitored WLTC's signal. Field strength measurements revealed that WLTC did not reduce transmitter power at sunset as required by the station authorization, but remained at daytime power in excess of the authorized post-sunset power of 500 watts, until 8:16 p.m. EDT. Local sunset occurs at 8:00 p.m. EDT in April.

4. On April 23, 2003, the agent of the Norfolk Office again monitored WLTC's signal. Again, field strength measurements revealed that WLTC did not reduce transmitter power at sunset as required by the station authorization, but remained at daytime power in excess of the authorized post-sunset powers until 9:10 p.m., EDT.

5. On April 24, 2003, the agent inspected WLTC's transmitter site during daytime hours. The agent observed antenna base current meter readings in both daytime and nighttime modes. The readings showed that the WLTC transmitter exceeded the authorized operating power by more than 20% in

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<sup>1</sup> 47 C.F.R. § 73.1745(a).

daytime mode and by more than 2000% in nighttime mode.

### **III. DISCUSSION**

6. Section 73.1745(a) of the Rules states that no broadcast station shall operate with modes or power other than those specified and made part of the license. On April 22 and 23, 2003, WLTC operated with daytime power after sunset until 8:16 p.m. and 9:10 p.m., respectively. Further, WLTC operated with excessive output power in the daytime mode on April 24, 2003.

7. Based on the evidence before us, we find Neely repeatedly<sup>2</sup> violated Section 73.1745(a) of the Rules by operating with unauthorized power.

8. Pursuant to Section 1.80(b)(4) of the Rules,<sup>3</sup> the base forfeiture amount for unauthorized power operation is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Considering the entire record and applying the factors listed above, this case warrants a \$4,000 forfeiture.

### **IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>6</sup> Neely is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for repeated violation of Section 73.1745(a) of the Rules for operating with unauthorized power.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Neely SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety

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<sup>2</sup> The term “repeated” means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

<sup>3</sup> 47 C.F.R. § 1.80(b)(4).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311.1.80.

<sup>7</sup> See C.F.R. § 1.1914.

Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Frank Neely 1286 Holland Road, Rock Hill, South Carolina 29732.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden,  
Resident Agent, Norfolk Office, Enforcement Bureau